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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
MCFARLAND CASCADE,

Appellant,

v.

OLYMPIC AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. -85-196

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal of a suspended civil penalty of \$50 for the alleged violation of Olympic Air Pollution Control Agency, Regulation I, Sections 9.11 and 9.23, came on for formal hearing in Lacey on December 4, 1985, before the Pollution Control Hearings Board, Lawrence J. Faulk (Presiding), Wick Dufford and Gayle Rothrock.

Appellant McFarland Cascade was represented by its Vice President and General manager, Peter Zech. Respondent Olympic Air Pollution Control Authority (OAPCA) was represented by its attorney Fred D. Gentry.

1 Witnesses were sworn and testified. Exhibits were examined. From  
2 the testimony heard and exhibits examined, the Board makes these

3 FINDINGS OF FACT

4 I

5 Appellant McFarland Cascade is a timber treating company located  
6 at 1412 North Washington in Olympia, Thurston County, Washington, near  
7 the northeast end of the peninsula jutting into Budd Inlet which is  
8 the property of the Port of Olympia. McFarland Cascade leases the  
9 site from the Port.

10 II

11 Respondent OAPCA is a municipal corporation with the  
12 responsibility for conducting a program of air pollution prevention  
13 and control in a multi-county area which includes the site of  
14 appellant's plant.

15 OAPCA, pursuant to RCW 43.21B.260 has filed with this Board a  
16 certified copy of its Regulation I (and all amendments thereto) which  
17 is noticed.

18 III

19 In the afternoon on August 23, 1985, respondent Agency received an  
20 odor complaint from a person who works at a yacht sales store 100  
21 yards south of appellant's plant and adjacent to a recently installed  
22 marina. Shortly thereafter OAPCA's inspector visited the scene and  
23 spoke with complainant and his wife.

24 In testimony, the complainant described the odor as gasoline-like  
25 or solvent-like. He found it highly objectionable. He stated that it

26 FINAL FINDINGS OF FACT,  
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1 caused burning of his nose and throat and the sensation of nausea. He  
2 said it was impossible to do his work and that he had a strong desire  
3 to leave. The complainant's wife verified that the same odor was  
4 present. She stated that she experienced a headache when subjected to  
5 the odor.

6 The inspector personally detected the odor and classified it as  
7 creosote smell typical of timber treating preservatives. He said the  
8 smell caused a scratchiness in his throat and a desire to leave the  
9 area.

10 The complainants and the inspector testified they are able to  
11 smell and discern odors as well as the average person, but that they  
12 are not usually sensitive to them.

#### 13 IV

14 Normally, the wind blows from the west at the McFarland Cascade  
15 plant, wafting any odors generated there onto the waters of the bay.  
16 On the date in question, however, the inspector noted that a northwest  
17 breeze was blowing from appellant's plant toward the complainant's  
18 office. The inspector followed the odor upwind to appellant's plant.  
19 The logs that were stacked in the storage yard were giving off vapors  
20 which had the same smell he had detected at the yacht sales office.

#### 21 V

22 The inspector visited appellant's plant and discussed the matter  
23 with William Baumann the plant superintendent for appellant. Mr.  
24 Baumann explained that the operation involves treating logs with  
25 preservatives. Some are impregnated with pentachlorophenol, others

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27 CONCLUSIONS OF LAW & ORDER  
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1 with creosote. This operation takes place in a closed structure and  
2 most of the vapors created are prevented from being emitted to the  
3 outside air by use of a condenser and scrubber.

4 However, some vapors escape when the doors are opened to remove  
5 the treated logs to the storage yard. And odors do emanate from the  
6 stored logs themselves. On the afternoon of August 23, 1985, the  
7 company was running a pentachlorophenol cycle.

#### 8 VI

9 On August 23, 1985 Notice of Violation (No. 00031) was issued to  
10 McFarland Cascade for violating Section 9.11 and 9.23 of OAPCA  
11 Regulation I.

#### 12 VII

13 On September 9, 1985, a Notice and Order of Civil Penalty was sent  
14 to appellant assessing a suspended penalty of \$50 for allegedly  
15 violating OAPCA Regulation I, Sections 9.11 and 9.23. From this,  
16 McFarland Cascade appealed on October 9, 1985.

#### 17 VIII

18 Appellant's business manager, Mr. Zech testified that this was the  
19 first cited odor problem in the thirty years that they have been  
20 treating these wood products at this location. He indicated that the  
21 land use of this part of the port area is changing from heavy  
22 industrial to recreational (Marina) and that in fact, the port has  
23 indicated that their lease will not be renewed when it expires in  
24 March, 1987. Therefore, they will need to relocate the plant. He  
25 indicated that they have over the years, made improvements to minimize

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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1 the odor from the plant, but that they do not know of any methods to  
2 make further improvements.

3 IX

4 The appellant in this case did not contend that the effects  
5 experienced on the date in question did not occur. Neither did the  
6 appellant show that any of the complainants nor the inspector  
7 possessed idiosyncratic sensibilities.

8 The Board finds on the record before it that the odors complained  
9 of emanated from appellant's plant and were, in fact, offensive to  
10 persons of normal sensitivity; and that they did, in fact,  
11 unreasonably interfere with the enjoyment of property and cause  
12 detriments to human welfare on the date involved here.

13 X

14 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
15 adopted as such.

16 From these Findings of Fact, the Board comes to these

17 CONCLUSIONS OF LAW

18 I

19 The Board has jurisdiction over these persons and these matters.  
20 Chapters 43.21B and 70.94 RCW.

21 II

22 OAPCA Regulation I, Section 9.11 entitled "Odor Control Measures"  
23 in pertinent part states:

24 (a) Effective control apparatus, measures, or  
25 process shall be installed and operated to reduce  
26 odor-bearing gases or particulate matter emitted  
into the atmosphere to a minimum, or, so as not to

1 create air pollution.

2 (c) No person shall cause or allow the emission or  
3 generation of any odor from any source which  
4 unreasonably interferes with another person's use  
and enjoyment of his property.

5 OAPCA Regulation I, Section 9.23, entitled "Emissions of Air  
6 Contaminant Or Water Vapor: Detriment To Persons And/Or Property"  
7 reads as follows:

8 (a) No person shall cause or allow the emission of  
9 an air contaminant or water vapor, including an air  
10 contaminant whose emission is not otherwise  
11 prohibited by this Regulation, if the air  
contaminant or water vapor causes detriment to the  
health, safety, or welfare of any person, or causes  
damage to property or business.

### 12 III

13 We conclude that the odors emitted by the McFarland Cascade  
14 Olympia plant on August 23, 1985, violated Section 9.11 and 9.23 c  
15 OAPCA Regulation I.

### 16 IV

17 The Washington Clean Air Act, chapter 70.94 RCW, is a strict  
18 liability statute. Explanations do not operate to excuse violations  
19 of regulations adopted under its authority. Air contaminant sources  
20 are required to conform to such regulations.

21 We recognize the special difficulties for industrial sources when  
22 the character of the neighborhood (and of the neighbors) changes.  
23 However, the Clean Air Act does not permit the balancing of equities  
24 in the manner of traditional nuisance law. The legislature has struck  
25 the balance, and violations are violations regardless of where they

1 occur. The violation in this case caused actual adverse effects to  
2 human comfort and convenience. This is a first offense, but even so,  
3 a suspended penalty of \$50 is modest in light of the \$1,000 maximum  
4 under the statute. The objects of the civil penalty, which include  
5 both deterrence in this specific case and the securing of compliance  
6 generally, are, we believe, appropriately served by the level of  
7 sanction selected in this case. On the entire record before us, we  
8 conclude that the penalty imposed in this instance is reasonable.

9 V

10 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
11 adopted as such.

12 From these Conclusions of Law the Board enters this  
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ORDER

The Notice and Order of Civil Penalty in the amount of \$50, suspended, by OAPCA to McFarland Cascade is affirmed.

DONE this 15th day of January, 1986.

POLLUTION CONTROL HEARINGS BOARD

 1/14/86  
LAWRENCE J. FAULK, Chairman

  
GAYLE ROTHROCK, Vice Chairman

  
WICK DUFFORD, Lawyer Member